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LOBBYING AND LOBBYISTS

An individual is a lobbyist if he or she engages in activities that constitute lobbying under the lobbying law, even if the activities are merely an outgrowth of legal representation. Lobbying includes attempting to influence or affect legislation or administrative rules, but does not include attempting to influence other kinds of agency decisions. Discussions with state agencies concerning the use of conventional construction bidding as opposed to privatization for prisons, attempts to get a state agency to make payments due your client, a conversation with a state agency regarding the effect of a highway project on your client, contacts regarding a client's proposal to design buildings for the State of Wisconsin, and discussions with a state agency concerning possible investment in a client do not appear to constitute lobbying and an individual's pursuit of these activities would not require the individual to obtain a lobbying license or require the individual's client to register as a lobbying principal with the Ethics Board. OEB 93-1 (January 15, 1993)

Facts

- [1] This opinion is based upon these understandings:
- a. You are attorneys and have been authorized lobbyists for several businesses during the 1991-92 legislative session.
 - b. You describe your government-related activities on behalf of your clients as having involved: (1) discussions with state agencies and individuals concerning the use of conventional construction bidding as opposed to privatization for prisons; (2) attempts to get a state agency to make payments due your client; (3) a conversation with a state agency regarding the effect of a highway project on your client;¹ (4) contacts regarding a client's proposal to design buildings for the State of Wisconsin; and (5) discussions with a state agency concerning possible investment in a client.
 - c. You indicate that the above activities are incidental to your legal work for your clients and that you have not contracted with your clients specifically to engage in lobbying.

Questions

¹ Wisconsin Ethics Commission Revision: This opinion assumes that the conversation referred to in item (3) did not involve discussion that would influence legislative action or rulemaking. See paragraph [7].

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[2] The Ethics Board understands your questions to be:

1. Do the activities outlined above constitute lobbying that would require your re-authorization as lobbyists during the 1993-94 legislative session?
2. Does attempting to influence administrative action include attempting to influence any policy of a state agency?

Discussion

[3] Wisconsin's lobbying law, by its terms, applies to every individual who (1) receives economic consideration, other than reimbursement for actual expenses, from another person, (2) whose duties include "lobbying" on behalf of that person, and (3) who makes lobbying communications with state officials on a requisite number of days during a reporting period.² Regardless whether an individual intends to be a lobbyist or thinks of himself or herself as a lobbyist, an individual is a lobbyist under the statute if he or she engages in paid activities that fall within the applicable statutory definitions. This holds true for attorneys as well as for others.

[4] The lobbying law defines "lobbying" as

the practice of attempting to influence legislative or administrative action by oral or written communication with any elective state official, agency official or legislative employe, and includes time spent in preparation for such communication and appearances at public hearings or meetings or service on a committee in which such preparation or communication occurs.

² Section 13.62 (11), *Wisconsin Statutes*, provides:

13.62(11) "Lobbyist" means an individual who is employed by a principal, or contracts for or receives economic consideration, other than reimbursement for actual expenses, from a principal and whose duties include lobbying on behalf of the principal. If an individual's duties on behalf of a principal are not limited exclusively to lobbying, the individual is a lobbyist only if he or she makes lobbying communications on each of at least 5 days within a reporting period.

Section 13.62(10g), *Wisconsin Statutes*, provides:

13.62(10g) "Lobbying communication" means an oral or written communication with any agency official, elective state official or legislative employe that attempts to influence legislative or administrative action, unless exempted under s. 13.621.

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[5] Section 13.62(10), *Wisconsin Statutes*. The lobbying law also specifically defines "legislative action" and "administrative action."

Section 13.62(8), *Wisconsin Statutes*, defines legislative action as follows:

"Legislative action" means the development, drafting, introduction, consideration, modification, adoption, rejection, review, enactment or defeat of any bill, resolution, amendment, report, nomination, administrative rule or other matter by the legislature or by either house or any committee, subcommittee, joint or select committee thereof, or by a legislator or employee of the legislature acting in an official capacity. "Legislative action" also means the action of the governor in approving or vetoing any bill or portion thereof, and the action of the governor or any agency in the development of a proposal for introduction in the legislature.

Section 13.62(1), *Wisconsin Statutes*, defines administrative action as follows:

"Administrative action" means the proposal, drafting, development, consideration, promulgation, amendment, repeal or rejection by any agency of any rule promulgated under ch. 227.

In essence, then, these terms refer to legislation and administrative rulemaking.

[6] A determination whether you have engaged in lobbying depends on whether you have attempted to influence legislation or administrative rules. We do not have enough facts to know whether your government-related activities on behalf of clients involve any efforts to affect legislation or rulemaking activities by a state agency. To the extent that your activities only involved efforts to obtain a specific action or decision by an agency, unrelated to the adoption, modification, or repeal of a statute or administrative rule, those activities are not lobbying.³

[7] You have expressed concern that the definition of "administrative action" could be interpreted to include attempting to influence any agency standard or policy because "rule" is broadly defined in chapter 227, *Wisconsin Statutes*, as "a regulation, standard, statement of policy, or general order of general application which has the effect of law and which is issued by an agency to implement, interpret or make specific legislation enforced by the agency, or to govern the organization or procedure of the agency" That interpretation is not merited. The definitional language of "administrative action" plainly refers to agency action (whether that be adoption or rejection) with respect to rules *promulgated* pursuant to the rulemaking procedures in chapter 227. This understanding, moreover, is fully supported by legislative history. In its analysis of 1977 Senate Bill 286, which

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was enacted as Ch. 278, Laws of 1977, and which first extended the lobbying law's coverage to include attempts to influence "administrative action," the Legislative Reference Bureau explained that "[t]he scope of the law is expanded to cover attempts to influence rule-making by state agencies" Thus, attempting to influence a state agency's decisions or positions not involving rulemaking does not constitute lobbying.

Advice

[8] The Ethics Board advises that you are a lobbyist if you engage in activities that constitute lobbying under the lobbying law, even if those activities are simply an outgrowth of your legal representation. Lobbying includes attempting to influence or affect legislation or administrative rules, but does not include attempting to influence other kinds of agency decisions. On their face, the specific matters about which you have asked do not appear to constitute lobbying and your pursuit of these activities would not require you to obtain a lobbying license or require your client to register as a lobbying principal with the Ethics Board.